

Indiana Office of Technology (IOT) Information Technology Policy (ITP) 02-1

Technology Profile: Information Technology Hardware, Software and Services

Specific Area: Procured, developed, maintained or used by state employees or the public

Purpose: To ensure that all information technology contracts and requests comply with the principles and goals contained in the electronic and information technology accessibility standards adopted by the architectural and transportation barriers compliance board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended.

Policy: In the interest of maintaining consistency with Federal standards, the Indiana Office of Technology is adopting the federal standards published by the federal Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. These can be found at: <http://www.access-board.gov/sec508/guide/index.htm>.

If the equipment, software or system is to be specifically used by an employee with a disability, immediate modification to comply with the standards is necessary. Should immediate modifications be unattainable, an alternative means for accessibility shall be provided for state employee users. If however, existing equipment, software or systems will not be used by state employees who have a disability, compliance to these standards is not necessary until the system is replaced, significantly modified or overhauled.

For IT equipment, software and services that are used by the public, the equipment, software and services must comply with these standards when it is replaced, significantly modified or overhauled. This includes all web pages hosted by or for the state of Indiana.

Agencies must include compliance to these standards using the Accessibility Compliance Evaluation Templates for the appropriate product(s) as a requirement in any procurement solicitation or contract for IT related products or services. For requests for proposal (RFPs), accessibility compliance must be at least 10% of the total evaluation criteria. Accessibility compliance must be a requirement for bids and quotations. If, however, the product or service is commercially unavailable or an undue burden is imposed upon the agency, then the agency must get a waiver approved by IOT before a special procurement may be awarded. A cost difference of more than 15% will be considered an undue burden.

This policy does not supersede the Americans with Disabilities Act (ADA).

Scope: All agencies within the executive branch of Indiana state government

Statutory Authority: IC 4-13.1

References: HEA 1926

Effective Date: July 1, 2005 (re-issued)

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Assistive Technology Standards

Definitions

Commercial nonavailability. [FAR 39.203(c)(1)] indicates that when acquiring commercial items, an agency need only comply with those standards that can be met with supplies or services that are available in the commercial marketplace in time to meet delivery requirements. Agencies need not acquire a noncommercial item in these cases to satisfy the Access Board standards. Commercial nonavailability must be addressed on an individual standard basis, and agencies cannot claim a commercial product as a whole is nonavailable just because it does not meet all the applicable standards. Agencies must include all available standards in the specification unless one of the exceptions in FAR 39.204 applies.

The exceptions in 39.204 include:

- Micro-purchases, prior to January 1, 2003. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

- Electronic and Information Technology (EIT) for a national security system;

- EIT acquired by a contractor incidental to a contract;

- EIT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; and

- EIT that would impose an undue burden on the agency.

FAR 39.202 defines **undue burden** as a significant difficulty or expense. For example, a new contract for the maintenance and support of a noncompliant legacy system may present an undue burden if the cost to make the system compliant would be excessive. It is critical to note, however, that FAR 39.204(e)(1)(ii) requires that in determining undue burden, an agency must consider all resources available to the program or component for which the EIT is being acquired. This means that undue burden cannot be established by simply saying that a compliant product "costs too much" or is more expensive than a noncompliant product. Case law has been compiled over the years as to what qualifies as an undue burden. Center legal counsel should be consulted and must concur on any undue burden determination.